

CALIFORNIA FAIR POLITICAL PRACTICES COMMISSION  
MINUTES OF THE MEETING, Public Session  
Friday, July 9, 1999  
9:30 a.m.

Call to order: Chairman Karen Getman called the monthly meeting of the Fair Political Practices Commission (FPPC) to order at 9:35 a.m. at 428 J Street, Eighth Floor, Sacramento, California. In addition to Chairman Getman, Commissioners William Deaver, Kathleen Makel and Carol Scott were present.

**Item #1. Approval of the Minutes of the June 4, 1999, Commission Meeting.**

The minutes of the June 4, 1999, Commission meeting were distributed to the Commission and made available to the public. Commissioner Makel moved to accept the minutes as presented. Commissioner Scott seconded the motion and it carried unanimously.

**Item #2. Public comment.**

There was no public comment.

**ENFORCEMENT MATTERS**

**Item #3. In the matter of Thomas Christopher Almeida, FPPC No. 96/453.**

Senior Commission Counsel Melodee Anderson presented the 10 count stipulation with a recommended fine of \$20,000.00. Chairman Getman questioned the method of charging counts 7-10. She did not feel that it was accurate to say that the Department of Education had made an illegal gift. She argued that the Department of Education thought they had made a legitimate travel expense reimbursement. Commissioner Scott voiced her concern that the stipulation only contained disclosure violations, and no conflict of interest violations. Ms. Anderson responded that potential conflict of interest violations were investigated but there was insufficient evidence to charge any conflict of interest violation.

Commissioner Scott expressed her concern that not enough information was included in the stipulation for the Commission to make an informed decision. Details of the case were discussed. The question of whether Mr. Almeida participated in the decision-making or influenced the decision-making was discussed. Commissioner Scott questioned whether enforcement personnel had looked at the subvendor relationship for government employees. Chairman Getman recommended that the investigator for these complicated cases be present at the Commission meetings to answer any questions the commissioners may have.

Ms. Anderson explained the Enforcement Division's reasoning in charging Mr. Almeida with receiving gifts, rather than income. Commissioner Makel expressed her concern that the payment was charged as a gift, which would put the donors in the potential position of being prosecuted for giving an illegal gift, when in fact they thought they were paying legitimate travel expenses.

Chairman Getman asked whether it should be charged as a failure to report income from the Foundation, rather than a failure to report a gift from the Department of Education. Ms. Anderson responded that the counts 7-10 in the stipulation could be revised in this manner.

Commissioner Scott expressed her concern that this was not more fully prosecuted as a criminal case. Mr. Morodomi explained that the Sacramento District Attorney's office prosecuted Mr. Almeida, but sometimes the FPPC is the only agency prosecuting these types of cases.

Mr. Morodomi suggested that we withdraw the stipulation, restructure counts seven through 10 with Mr. Almeida's attorney, Ben Davidian, and bring the matter back to the Commission for consideration.

The commissioners directed the Enforcement Division to go back and rework items 7-10. Mr. Davidian requested that it be done and completed by the end of today's meeting. It was agreed that they would try to do it today.

**Item #4. In the Matter of Chris Miller, FPPC No. 97/232.**

Enforcement Division Counsel Deborah Bain presented the case finding that Mr. Miller misappropriated monies in the total amount of approximately \$122,000.00 from nine committees. He has paid \$60,000 in restitution with regard to the criminal prosecution. He will be paying restitution for the entire amount. She explained that they had considered a number of things in bringing their recommendation, including the number of years he has been engaging in this activity, the extent of the falsity, his intentional misrepresentation to the committees, his submission of false billing statements, and false campaign documents, etc.

Commissioner Makel agreed that this was egregious conduct, but questioned whether this was a double jeopardy situation. Since he will be paying full restitution and has gone through the criminal prosecution and been convicted, she asked if \$600,000.00 is too much.

Ms. Bain explained that he has already benefitted from the restitution in that the judge is allowing him to serve his sentence in local time, meaning at a local jail or possibly work service as well. Mr. Morodomi explained that, by law, this is not a double jeopardy situation. He explained that this has been a joint investigation with the San Diego District Attorney's office with the understanding that we would also be initiating a prosecution in combination with their

action. Ms. Bain further explained that Mr. Miller refused to cooperate with the investigation, resulting in the need to expend an enormous amount of additional resources to investigate the case.

Chairman Getman voiced her concern that the amount of the fine was disproportionate, and the Commission discussed with Ms. Bain and Mr. Morodomi the rationale for the \$600,000 fine. Mr. Morodomi explained that in a criminal case, Mr. Miller could be liable for three times the amount of misappropriated funds.

Chairman Getman moved that the fine be \$300,000.00. Commissioner Makel seconded the motion and the motion carried unanimously.

**Items #5 and #6:** Chairman Getman moved that items #5 and #6 on the enforcement calendar be approved. Commissioner Deaver seconded. There was no opposition.

## **LEGAL MATTERS**

### **Item #7. Adoption of Proposed Regulation 18370; State Agency Ethics Training; Government Code Section 11146.1.**

Legal Division Counsel John Vergelli presented the regulation with the changes recommended by the Commission at the last meeting, as well as another suggestion from staff to delete a sentence referring to a specific training format.

Kathleen Makel moved to adopt the regulations without the bracketed sentence. Commissioner Deaver seconded. The motion carried without objection.

## **ACTION ITEM**

### **Item #8. Adoption of Resolution Regarding Delegation of Commission Authority; Formation of Legislative Subcommittee; Government Code Section 83108.**

Legal Division Counsel Larry Woodlock presented concerns expressed to him by Ted Prim of the Attorney General's Office. Mr. Prim felt that a two member subcommittee that exercised delegated authority might still be subject to the Bagley-Keene Open Meeting requirements. Mr. Woodlock explained that he did not feel this would be a problem, as long as the Commission was delegating authority to the Chairman, not to the committee. He proposed that to make sure it was clear that it was the Chairman and the Chairman alone who was receiving the authority to act, that the name of the subcommittee be changed from "The Commissions' Legislative Subcommittee" to "The Chairman's Advisory Subcommittee on Legislation" to make certain that the substantive provisions of this resolution are reflected in the name of the subcommittee.

Chairman Getman noted that in 25 years there has been no official delegation of authority to the

Chairman to act on legislative matters.

Commissioner Makel motioned to adopt the resolution with the proposed name change. Commissioner Deaver seconded. The motion carried without objection.

## **DISCUSSION ITEMS**

### **Item #9. New Outreach and Compliance Procedures Regarding Non-filers of Statements of Economic Interests.**

Enforcement Division Counsel Amy Holloway presented the new program regarding non-filers of Statements of Economic Interests. She explained the old system, which took at least 12-18 months from the original filing date before the Enforcement Division began to do something active. This would occur if the non-filers had not responded to the original letters. The new system would utilize initial telephone contacts when possible, thereby reducing that time to six months. She explained that they hope to gain compliance in a quicker form, and minimize public harm.

FPPC Investigator Bill Motmans explained what his interview discussion would be like with a non-filer. Before calling, he would look at the filing history of the person. When he calls, he would ask if they have filed, explain the process and emphasize that they do have to file, and prepares a report based on the information they give him.

Commissioner Scott questioned whether the non-filers are told the significance of the filing requirements. Mr. Motmans responded that most of the non-filers say that they thought they had filed, or they did not get the paperwork. Ms. Holloway added that most people realize their filing obligations.

Commissioner Scott noted that sometimes new commissions or boards do not understand their obligations and that she would like to see some mechanism developed which would reach out to those people to make sure that they do understand their obligations.

Ms. Holloway answered that the FPPC does not see many of those cases and that the local filing officers seem to be handling that, emphasizing that filers seem to be aware of their obligation. She stated that the FPPC is the filing agency for approximately 17,000-20,000 filers.

Ms. Holloway asked for direction from the Commission for two items: how does the Commission want these items presented to them after the filing, and what is the appropriate fine? She requested that they be given approval to implement low level fines, around \$200.00 if they file promptly in response to the request, which would usually be within three or four months of the filing date. Commissioner Makel responded that that range sounded reasonable, and that if they repeat the failure to file timely that the next fine may be higher. Ms. Holloway also presented the idea of streamlined stipulations which would contain the basic facts and no

mitigating or aggravating factors.

Commissioner Scott suggested that the format of the stipulation have the facts woven into them, instead of in attached exhibits. Ms. Holloway explained that this is the way it has been done historically. Mr. Morodomi added that this is something that could possibly be done. Chairman Getman asked that the staff look at it and see if there would be an advantage to changing the format.

Mr. Morodomi asked a few questions about the exercise of their prosecutorial discretion. The Commissioners directed staff to follow through with the enforcement process, even in cases where the person is only a day or two late if they refuse to pay the \$200 fine. Commissioner Scott added that the Commission should be advised of the details of the case, including how many times the person was contacted, how many days the filing was late, and any other relevant information.

#### **Item 10. Discussion of Proposed Legislation Concerning Campaign Reporting.**

Legal Division Counsel Hyla Wagner discussed the Legal Division's efforts to simplify campaign reporting. There are two parts to the proposed legislation, the form changes and the regulations. The big new change was to combine the three long forms, 490, 420, and 419, into one form. The proposal makes extensive changes to Chapter 4 of the Political Reform Act.

The biggest change in the proposal was the change to quarterly filing, providing regular reporting dates and eliminating three of the hardest reports. Some people have expressed concerns about the new proposal because it increases filing obligations at the local level to some degree.

Ms. Wagner discussed specifics of the proposal. She reported that SB 50 has similar report dates but is less broad.

Ms. Wagner explained the small changes to the report content, dictating what has to be in the report. It will list loans, and show whether they have been repaid or forgiven, making it easier to track and providing better disclosure. It will add dates to the expenditure schedules and will delete section 84211 that requires special reporting on travel expenditures while reporting new expenditure codes. Subvendor reporting thresholds will be raised from \$10 to \$500. The proposal will eliminate the names and addresses of signature gatherers and will require asset reporting at a high threshold. Ms. Wagner reported other small changes, to finish moving bank account information and getting rid of the Form 470 supplement

A new idea not in the earlier proposals is a change to major donor reporting changing the definition of major donor to make it a donor who gave more than \$10,000 to more than one candidate or committee, cumulatively. Chairman Getman pointed out that we would eliminate one disclosure by requiring a business entity that gives money to describe the purpose and nature of its business. Commissioner Scott expressed concern over the lost information of the nature of

the business because that information is so useful.

Ms. Wagner requested guidance from the Commission before staff discusses the proposal with anyone from the Legislative staff.

Chairman Getman requested input from the public, noting and thanking Secretary of State Bill Jones and his staff for their written input and cooperation.

Chuck Bell, with the law firm Bell, McAndrews and Hiltachk, complimented the staff for the proposals and their initiative. He was concerned about whether or not to move it this year, and felt that some or all of this package should go through this year. He explained that since we are going into the Internet filing era, it might be useful to make these changes at one time rather than over a course of a couple of cycles. In particular, he would like to see the special reports, the travel log, and the subvendor reporting issues moved this year. He would also like to see more done with major donor filing.

Tony Miller also commended the staff and encouraged the staff to move forward with it legislatively as soon as possible. Much of the package is worthy of support, specifically the quarterly filing provisions, but he expressed some concerns about the major donor proposal. The million dollar donor to a single candidate would still not have to file anything. Mr. Miller feels that a lot is lost if the individual does not have to report the nature of the employer's business interests, or the nature of the business interests of self employment if they are self employed major donors. The individual could very well be furthering the interests of the business even though the money was coming out of the individual's personal funds.

Technical Assistance Division Chief Carla Wardlow pointed out the difficulty for committees to know who they need to get that information from, since they have no way of knowing who else the donor may have contributed to.

Steve Churchwell noted that not having that information would eliminate a valuable tool in identifying possible money laundering cases.

Chairman Getman clarified that the person who gives to more than one committee will have to file a major donor report, so it would only be the individual who gives \$10,000 or more to a single committee who would not be disclosing that information. Mr. Churchwell pointed out that most major donors that currently give large amounts of money are not likely to give to just one entity or committee.

Commissioner Scott noted her concern that the donors may not know of their obligations to report and that it is the Commission's duty to get that information to the public. Tony Miller pointed out that committees are required to notify donors of over \$5,000 of the major donor filing requirement. Chairman Getman discussed who should have the burden-the recipient or the donor, and suggested adding one page to the donor report if it is truly needed.

Ms. Wagner suggested that staff would look more closely at the major donors reports to determine if this is an issue.

Commissioner Makel expressed her concern that the forms did not provide enough information for the public to understand where the donation was coming from. Mr. Churchwell explained the process in detail, illustrating how that information could be gleaned from the reports.

Commissioner Scott expressed her concern that the information should be more easily available, and that the committees who are taking the money should have the obligation to obtain certain information from the donors. Chairman Getman argued that since the money was coming from their personal funds it should not be necessary. Commissioner Deaver felt that the information was already available easily enough. Chairman Getman requested that the staff find out how many people this is an issue with.

Jim Knox, with California Common Cause, commended staff for their work in this area. He strongly urged the Commission not to move forward with any legislation this year. He felt this legislation was too important to pursue this year as a rush job and that it would not get a proper hearing this year. He expressed concerns about quarterly reporting and major donor reporting.

Legal Division Assistant General Counsel Luisa Menchaca explained the legislative deadlines and agreed that timing is an issue. She explained that it could be awkward with Senator Johnson's SB 50 and Senator Sher's campaign related bill, and suggested that this proposal could be viewed as hampering their efforts. She suggested that staff do some analysis and comparisons of how it would impact their legislation. She explained that it was a policy decision for the Commission on how to proceed at this point.

Chairman Getman suggested that the Commission make this proposal the forefront of the FPPC's legislative program next year. She requested permission to have Scott Tocher, FPPC Legislative Coordinator, put together a coalition including the California Political Attorney's Association, Common Cause, the reform movement and the Secretary of State's Office to present this to the Legislature next year as a coalition in agreement on 80 percent of the proposal, making sure that those pieces the coalition is not in agreement on will be identified and differing views will be made known.

Mr. Churchwell suggested that some of the proposal could be made urgency legislation which would make some of it effective in April of 2000 to address Mr. Bell's concerns.

Chairman Getman also requested permission to go to the leadership of the Legislature to let them know what the Commission would like to do next year and get their sense of the proposal also. There was agreement from the Commissioners.

## **Item 11. Legislative Report**

### **Part One**

Scott Tocher introduced himself as the new Director of Government Relations and expressed his pleasure to be with the FPPC. Because the Assistant General Counsel had prepared the legislative report, he turned the presentation over to Luisa Menchaca.

**SB 50 (Johnson), as amended June 15, 1999:** Ms. Menchaca reported that the author of SB 50 (Johnson) has requested a position of support by the Commission. There were some problems with the bill and the suggestions that the Commission had recommended have been made.

Chairman Getman motioned that the Commission support SB 50. Commissioner Deaver seconded the motion. There was no opposition and the motion carried.

**SB 1208 (Sen. Cmte. on Elections & Reapp.), as amended June 14, 1999:** No action was requested on the part of the Commission. It has recently been amended and the changes do not affect the Act. The bill is to be passed by 2/3 vote even though that is not required. The author has been advised of that by staff but since the bill is flowing through the legislative process, that will not be amended.

**SB 1223 (Burton), as amended June 15, 1999:** This bill was not being presented to the Commission for a position, but Ms. Menchaca requested permission from the Commission for staff to work with the author with respect to some technical problems they have found with the bill. There was no objection.

**AB 1414 (Papan), as amended June 21, 1999:** Currently the Commission has a position of support on this bill and an amendment has changed the wording not specifically referencing the Constitution. Staff recommends that the Commission continue to support the bill. There was no objection.

## **Part Two**

**AB 974 (Papan), as amended April 5, 1999:** This bill has been moving forward without difficulty. The Legal Division requested that the Commission consider increasing the recipient independent expenditure committee thresholds from \$1,000 to \$2,000, in order to help the Commission avoid First Amendment challenges in the future. Mr. Churchwell explained the free speech issue, pointing out that the threshold was established in 1974 at \$1,000, and the amount should be increased to allow for inflation.

Commissioner Makel was concerned that at the local level \$1,000 was still a lot of money.

Commissioner Deaver agreed with Commissioner Makel.

The Commission did not support the proposal to increase the thresholds.



**AB 1274 (Frusetta), as amended May 19, 1999:** The staff recommended a technical change clarifying the bill. The bill has been amended in the Senate Elections Committee, and Ms. Menchaca requested that the Commission ratify the change. There was no opposition to the change.

### **Part Three**

#### **AB 1630 (Villaraigosa), as amended April 28, 1999**

This bill would require the Commission, under specified circumstances, to issue oral advice. The memo outlines the possible fiscal impacts on the FPPC, ranging from zero to \$1,000,000.00, depending on how the FPPC chooses to implement the bill. Chairman Getman pointed out that there is also some concern about how this interacts with criminal prosecutions. The Commission discussed the four alternatives for the implementation.

Commissioner Scott asked if the staff will not be maintaining written records of verbal advice. She liked Alternative 2 but wanted better records of the advice that is given. She noted that there were issues of immunity, documentation and the overall concern of spending so much time looking at how we are doing instead of doing proactive work. Specifically, she asked whatever happened with the Advice Process discussions of last year. Chairman Getman outlined that process as it currently works. Commissioner Scott recommended the the FPPC keep records of oral advice for the purpose of knowing what we do and that we are consistent.

Commissioner Makel noted that we get 55,000 calls a year, and that we can get as many as 370 per day and that if we keep written records, there would be a huge expense attached to it.

Chairman Getman discussed alternative types of record keeping, which could include different types of record keeping for different types of calls. Commissioner Scott specified which types of record keeping she would like to see. Commissioner Deaver noted there are some computer systems which would help the technical assistance person, but may cost a lot. He also noted that we currently have a pretty good system.

Chairman Getman noted that one good thing about this proposal is that it would give us a record of everyone we gave advice to, which can be important in enforcement cases. Commissioner Makel added that it would be great, as long as we have the resources to do it.

Chairman Getman suggested that we go to the Legislature and tell them how the FPPC would like to implement the proposal and tell them how much it would cost, giving them the option of supporting it financially.

Specific discussions of each alternative followed. There was general discussion with using

Alternative 2 and some aspects of Alternative 3. Chairman Getman suggested opposing the bill, but noting that if the bill does pass, the Commission would like to see either one of the alternatives or a combination of the alternatives. Ms. Menchaca noted that the proposal is coming up before an Appropriations Committee hearing and that the staff could submit as an amendment that the actual monies be included in the bill or wait until next year as a budget change proposal.

Chairman Getman proposed that the Commission oppose the bill, but that if the bill does move forward, they propose an implementation system that will cost in the nature of \$500,000 and we can work out the details later utilizing something in between Alternatives 2 and 3 once they see what the bill is like. Commissioner Scott voiced some concerns and Ms. Menchaca clarified the proposal.

Chairman Getman motioned that the Commission oppose AB 1630, and inform the Legislature that if AB 1630 passes we intend to implement in a manner that will continue to allow us to answer certain calls without providing written documentation and would give the caller the option of requesting technical information and our implementation system will, we estimate, cost somewhere in the nature of \$560,000.00 and we request that an appropriation for that amount be within the bill. Commissioner Makel seconded the motion. There was no opposition.

**SB 342 (McPherson), as amended April 14, 1999:** The position on SB 342 requests that the Commission support the extension of the time period necessary for the Bipartisan Commission to complete its work.

Chairman Getman noted that the Secretary of State's Office has asked the Commission to join them in support of the extension of time for SB 342.

Jim Knox, of California Common Cause, urged the Commission to oppose SB 342 because it violates the spirit of the original legislation and ratifies the current ideological imbalance of the Commission. He added that it still does not bring the McPherson Commission into compliance with the statute and it extends the life of this biased commission. He noted that they see the value of assessing the campaign laws, and that they would support a balanced and fair review of the act. However, he agreed this is not what is happening with the McPherson Commission because its composition is grossly one-sided. Mr. Knox discussed the legal requirements and importance of a balanced composition of the Commission. He also noted that SB 342 fails to correct either of the two statutory provisions which the McPherson Commission is currently violating. The Commission would increase the number of political attorneys that can serve on the committee and does not have a gubernatorial appointee representing public interest groups.

Steve Lucas, Chairman of the Bipartisan Commission for the Political Reform Act, noted that the Bipartisan Commission deserves time to do its project correctly now that the funding has been provided.

Ben Davidian, member of the McPherson Commission, objected to Mr. Knox' assertions that the McPherson Commission showed any bias, noting that his comments were an outrageous abuse of those persons who have contributed their time to be on the McPherson Commission. He stated that he felt that the McPherson Commission represented a very substantial portion of the public.

Chairman Getman moved that the Commission support the continuation of the McPherson Commission through next year and take no position on the issue of its composition. Commissioner Deaver seconded. There was no opposition and the motion was passed.

**Item 13. Executive Director's Report**

Commissioner Deaver motioned that the Commission accept the Executive Director's report as submitted. Chairman Getman welcomed Sigrid Bathen as FPPC Media Director, and Sandy Johnson as Executive Secretary.

**CLOSED SESSION**

The Commission meeting adjourned for closed session at 1:15 p.m.

**Item 14. Pending Litigation (Gov. Code § 11126(e)(1)).**

**a. Case name not disclosed pursuant to Gov. Code § 11126.3(a).**

**Item 15. Initiation of Litigation (Gov. Code § 11126(e)(2)(C)(i)).**

**a. Bell Gardens Bicycle Club.**

**b. Case name not disclosed pursuant to Gov. Code § 11126.3(a).**

**Item 16. Personnel (Gov. Code § 11126(a)).**

Respectfully submitted,

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Approved  
Karen Getman  
Chairman

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Sandra A. Johnson  
Commission Secretary